

1 State of Arkansas
2 91st General Assembly
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4

As Engrossed: H3/14/17

A Bill

HOUSE BILL 2273

5 By: Representative Wing
6

For An Act To Be Entitled

8 AN ACT TO DEVELOP A CONSTRUCTION MANAGER-GENERAL
9 CONTRACTOR METHOD OF PROCUREMENT FOR TRANSPORTATION
10 PROJECTS; TO CREATE A CONSTRUCTION MANAGER-GENERAL
11 CONTRACTOR METHOD OF PROCUREMENT PILOT PROGRAM; AND
12 FOR OTHER PURPOSES.
13

Subtitle

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15
16 TO DEVELOP A CONSTRUCTION MANAGER-GENERAL
17 CONTRACTOR METHOD OF PROCUREMENT FOR
18 TRANSPORTATION PROJECTS; AND TO CREATE A
19 CONSTRUCTION MANAGER-GENERAL CONTRACTOR
20 METHOD OF PROCUREMENT PILOT PROGRAM.
21

22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 *SECTION 1. Arkansas Code Title 19, Chapter 11, is amended to add an*
26 *additional subchapter to read as follows:*

27 *Subchapter 14 – Construction Manager-General Contractor Method of Procurement*
28 *Pilot Program*
29

30 *19-11-1401. Title.*

31 *This subchapter shall be known and may be cited as the "Construction*
32 *Manager-General Contractor Method of Procurement Pilot Program".*
33

34 *19-11-1402. Legislative findings.*

35 *The General Assembly finds that:*

36 *(1) An efficient transportation system is critical for*



1 Arkansas's economy and the quality of life of the state's residents;

2 (2) Transportation projects are costly and the revenues
3 currently available for highways and local roads are inadequate to preserve
4 and maintain existing infrastructure and to provide funds for highway
5 improvements;

6 (3) The State Highway Commission is interested in developing an
7 alternative, cost-effective, procurement procedure for transportation
8 projects performed by the commission and the Arkansas State Highway and
9 Transportation Department;

10 (4) Other states have begun to explore the utilization of a
11 construction manager-general contractor method as a cost-effective and
12 efficient option for constructing transportation projects, including the
13 State of California, which applies the construction manager-general
14 contractor method when it is anticipated that the use of the construction
15 manager-general contractor method will reduce transportation project costs or
16 expedite transportation project completion in a manner that is not achievable
17 through the design-bid-build method;

18 (5) A construction manager-general contractor method allows the
19 commission to engage a construction manager:

20 (A) To assist during the design and development process of
21 the transportation project, including without limitation to provide input
22 concerning the transportation project's:

23 (i) Design;

24 (ii) Scheduling;

25 (iii) Pricing; and

26 (iv) Phasing; and

27 (B) Who may subsequently become the general contractor and
28 construct the transportation project if the parties agree on a guaranteed
29 maximum price; and

30 (6) The cost-effective benefits are achieved by shifting the
31 liability and risk for cost containment and transportation project scheduling
32 to the construction manager, which leads many states to call this method the
33 "construction manager at-risk method".

34
35 19-11-1403. Definitions.

36 As used in this subchapter:

1 (1) "Authorized contingency" means a provision prepared and
2 submitted by the construction manager-general contractor as part of the
3 guaranteed maximum price that is designed to cover costs that may result
4 from:

5 (A) Incomplete design;

6 (B) Unforeseen and unpredictable conditions; or

7 (C) Uncertainties within the defined transportation
8 project scope that a prudent construction manager would not have reasonably
9 detected or anticipated during the discharge of his or her preconstruction
10 duties;

11 (2) "Construction manager-general contractor" means a business
12 firm or a legal entity selected by the Director of State Highways and
13 Transportation, to act as a construction manager to provide preconstruction
14 services during the design and development phase of a transportation project;

15 (3) "Construction manager-general contractor method" means a
16 transportation project delivery method using a best value procurement process
17 in which a construction manager is procured to provide preconstruction
18 services and may subsequently construct the whole transportation project or
19 any part of the transportation project as the general contractor if the
20 Arkansas State Highway and Transportation Department and the construction
21 manager-general contractor reach an agreement on a guaranteed maximum price;

22 (4) "Guaranteed maximum price" means:

23 (A) The total dollar amount agreed to by the construction
24 manager-general contractor to complete the construction of the transportation
25 project, including without limitation the construction manager-general
26 contractor's:

27 (i) Direct costs;

28 (ii) Overhead;

29 (iii) Profit; and

30 (iv) Any authorized contingency; and

31 (B) Any dollar amount added to the total dollar amount of
32 the transportation project submitted under subdivision (4)(A) of this section
33 to cover additional costs arising from changes in the scope of work as the
34 department may subsequently direct in writing;

35 (5) "Preconstruction services" means work, labor, or services,
36 including services furnished in connection with the design and development of

1 a transportation project before the construction phase, including without
 2 limitation:

3 (A) Cost estimates;

4 (B) Schedule analysis;

5 (C) Sequencing of work;

6 (D) Risk identification and mitigation;

7 (E) Constructability reviews;

8 (F) Evaluation of alternative construction options;

9 (G) Assistance with various permits;

10 (H) Coordination with public or private utility service
 11 providers;

12 (I) Communication with third-party stakeholders or the
 13 public; and

14 (J) Development of a guaranteed maximum price; and

15 (6) "Request for proposals" means a document or publication
 16 soliciting proposals for a contract for construction of a transportation
 17 project between a construction manager-general contractor and the department.

18
 19 19-11-1404. Construction Manager-General Contractor Method of
 20 Procurement Pilot Program – Creation.

21 (a) The State Highway Commission may develop a Construction Manager-
 22 General Contractor Method of Procurement Pilot Program to test the
 23 utilization of the construction manager-general contractor method as a cost-
 24 effective option for constructing transportation projects.

25 (b)(1) During the term of the program the commission may select a
 26 total of three (3) transportation projects on which to utilize the
 27 construction manager-general contractor method.

28 (2)(A) The sum of the construction cost estimates prepared as
 29 required under § 19-11-1407 of all three (3) construction manager-general
 30 contractor method transportation projects shall not exceed two hundred
 31 million dollars (\$200,000,000).

32 (B) The construction cost estimate of the first
 33 construction manager-general contractor method transportation project shall
 34 not exceed seventy million dollars (\$70,000,000).

35 (C) The sum of the construction cost estimates of the
 36 remaining two (2) construction manager-general contractor method

1 transportation projects shall not exceed one hundred million dollars
2 (\$100,000,000).

3 (c) The Director of State Highways and Transportation shall send
4 written notice identifying the transportation project and the reasons for
5 deciding to apply the construction manager-general contractor method to that
6 specific transportation project to:

7 (1) The Chair of the House Committee on Public Transportation;
8 and

9 (2) The Chair of the Senate Committee on Public Transportation,
10 Technology, and Legislative Affairs.

11 (d) A program established under this subchapter shall terminate no
12 later than June 30, 2022.

13
14 19-11-1405. Project selection.

15 (a) The Arkansas State Highway and Transportation Department shall not
16 initiate another construction manager-general contractor method
17 transportation project until after a contract for construction of the first
18 construction manager-general contractor method transportation project has
19 been awarded.

20 (b) If the department determines that a construction manager-general
21 contractor method of procurement is appropriate for a transportation project,
22 the department shall establish a procedure for awarding the contract for
23 construction of the construction manager-general contractor method
24 transportation project using the criteria listed in § 19-11-1406.

25
26 19-11-1406. Request for proposals.

27 (a) A request for proposals under this subchapter shall include
28 without limitation the following:

29 (1) The minimum qualifications of the construction manager-
30 general contractor;

31 (2) The procedures for submitting a proposal to the Arkansas
32 State Highway and Transportation Department, the criteria for the evaluation
33 of and selection of a construction manager-general contractor to perform
34 preconstruction services, and the relative weight assigned for each criteria
35 as indicated in a technical scoring matrix;

36 (3) The form of the contract to be awarded for preconstruction

1 services;

2 (4) A listing of the types and scope of the preconstruction
3 services that will be required;

4 (5) The scope of the intended contract;

5 (6) The budget limits for the transportation project and the
6 preconstruction services;

7 (7) The method of payment and structure of fees for the
8 preconstruction services;

9 (8) A requirement that the construction manager-general
10 contractor submit relevant information regarding any licenses, registration,
11 or credentials that may be required to construct the transportation project;

12 (9) A requirement that the construction manager-general
13 contractor provide evidence that establishes that the construction manager-
14 general contractor is capable of obtaining the required bonding and
15 insurance;

16 (10) A requirement that the construction manager-general
17 contractor submit information concerning the debarment or default from a
18 federal, state, or local government transportation project within the past
19 five (5) years;

20 (11) A requirement that the construction manager-general
21 contractor provide information concerning the bankruptcy or receivership of
22 any of its members, including information concerning any work completed by a
23 surety;

24 (12) A requirement that the construction manager-general
25 contractor provide evidence of competency, capability, and capacity to
26 complete a transportation project of similar size, scope, or complexity; and

27 (13) A prohibition that excludes a person or firm that has
28 received compensation for assisting the department in preparing the request
29 for proposals from submitting a proposal in response to the request for
30 proposals or participating as a construction manager-general contractor team
31 member.

32 (b) A request for proposals under this subchapter shall not:

33 (1) Require that the construction manager-general contractor
34 have prior experience with any particular transportation project procurement
35 method as a condition for submitting a proposal; and

36 (2) Give any preference for any particular contract delivery

1 method in the scoring of a proposal.

2 (c) The department shall:

3 (1) Send a written notice of award to the best-evaluated
4 construction manager-general contractor; or

5 (2) Send to all the construction manager-general contractors
6 that submitted a proposal a written notice that all proposals have been
7 rejected.

8
9 19-11-1407. Construction manager-general contractor selection.

10 (a) The Arkansas State Highway and Transportation Department shall:

11 (1) Prepare contract plans, specifications, special provisions,
12 and other requirements composing the contract for construction of a
13 transportation project elected for procurement using the construction
14 manager-general contract method authorized by this subchapter;

15 (2) Prepare a detailed construction cost estimate to evaluate
16 the appropriate price for the construction of the transportation project;

17 (3) If requested by the Director of State Highways and
18 Transportation, have an independent third-party cost estimator prepare a
19 detailed construction cost estimate to confirm the appropriate price for the
20 construction of the transportation project;

21 (4) Include in the contract created by subdivision (a)(1) of
22 this section a requirement that the construction manager-general contractor
23 perform at least thirty percent (30%) of the total cost for construction, not
24 including the preconstruction work performed by the construction manager-
25 general contractor; and

26 (5)(A) Keep the construction cost estimates prepared under
27 subdivisions (a)(2) and (3) of this section confidential and not subject to
28 public disclosure until after the contract has been awarded.

29 (B) Construction cost estimates prepared under
30 subdivisions (a)(2) and (3) of this section are confidential and exempt from
31 public disclosure under the Freedom of Information Act of 1967, § 25-19-101
32 et seq., but only until after the contract has been awarded.

33 (b) A construction manager-general contractor shall submit to the
34 department a guaranteed maximum price for the construction of the
35 transportation project using the contract plans, specifications, special
36 provisions, and other requirements prepared by the department as required by

1 subdivision (a)(1) of this section.

2 (c) The department may award the contract to a construction manager-
3 general contractor if the guaranteed maximum price does not exceed the cost
4 estimate provided by the department or independent third party by more than
5 ten percent (10%).

6 (d) If the director rejects the proposed guaranteed maximum price, the
7 department may:

8 (1) Work with the construction manager-general contractor to
9 find a guaranteed maximum price that is acceptable to both parties; or

10 (2) Request that the construction manager-general contractor
11 provide additional preconstruction services and submit a new guaranteed
12 maximum price as directed by this section.

13 (e) If the department does not award the contract to a construction
14 manager-general contractor, the department may proceed with the
15 transportation project using a procurement process authorized by law.

16
17 19-11-1408. Rules.

18 The State Highway Commission and the Arkansas State Highway and
19 Transportation Department may promulgate rules to implement and administer
20 this subchapter.

21
22 /s/Wing

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25 **APPROVED: 04/01/2017**